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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------------|------------------------|
| 10/650,459 | 08/27/2003 | Jerome Fournier | 979-032 | 7120 |
| 7590 SOFER & HAROUN, L.L.P. Suite 910 317 Madison Avenue New York, NY 10017 | 06/25/2007 | | EXAMINER VARGOT, MATHIEU D | |
| | | | ART UNIT 1732 | PAPER NUMBER |
| | | | MAIL DATE 06/25/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | |
|------------------------------|-------------------|-----------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/650,459 | FOURNIER ET AL. |
| | Examiner | Art Unit |
| | Mathieu D. Vargot | 1732 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 April 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

1. Claims 1-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims are rejected for reasons of record and it is maintained that the specification as originally filed does not provide support for the aspect of a liquid preform being **drawn**. It does support the aspect of the liquids flowing down the tapered tube 2 to form a liquid preform that is smaller in diameter than the one formed initially. However, this is not drawing in the sense that the term is conventionally used. While applicant is entitled to be his own lexicographer, he cannot use terms in a manner inconsistent with the way the art uses and understands them. In the instant case, it would appear that the liquid is allowed to flow into a nozzle whereby the diameter of the liquid preform is reduced from what it was. However, it is maintained that this is not drawing nor does applicant's specification say it is. In fact, exactly the opposite is set forth. For instance, paragraph 0065 states that the flow of the liquid preform into the calibrated die 6 brings the preform "to a diameter compatible with drawing". This would seemingly indicate that the flow of the preform is not considered to be drawing, but rather a step preceding the drawing. The same with paragraph 0041, which states that to "achieve dynamic flow of the preform, drawing can be preceded by pressuring said system". The paragraphs pointed out by applicant as indicating that a liquid is drawn –ie, paragraphs 65, 66 and 77-81—do not appear to actually teach drawing a liquid. They do teach that the liquid will flow down the tube and

have the diameter reduced. However, this is not drawing in the sense that the term is conventionally used.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by PCT Publication WO 00/56777 (see Kim et al USP 6,563,994) for reasons of record as set forth in paragraph 2 of the previous action. Note that the apparatus claims call for a preform formation system that does not structurally define over the applied reference. Applicant's statement that these claims are allowable because of their dependency on method claim 1 is not persuasive. First of all, claim 1 has not been deemed to be allowable. Secondly, the issues are different. As already pointed out, as long as the apparatus of the applied reference is capable of forming the instant preform—and it is—it is not material that certain of the instant steps are not shown in the reference or that it is dependent on the method claim 1. Structure needs to be set forth to define over PCT –777 that simply has not been recited in the claims.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over PCT Publication WO 00/56777 (see Kim et al USP 6,563,994) for reasons of record as set forth in paragraph 3 of the previous action and the comments set forth in paragraph 2, *supra*.

4. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over PCT Publication WO 00/56777 (see Kim et al US Patent 6,563,994) in view of Perrin et al generally for reasons of record as set forth in paragraph 4 of the previous action with these additional comments. Applicant has amended the claims to recite a particular viscosity over which the preform is a liquid. However, a close review of Perrin et al shows that the reference discloses this viscosity—see col. 4, lines 13-19—and the figures in the secondary reference clearly show that the compositions are forced to flow or flow through gravity to the die 15, whereby the diameter of the liquid preform is reduced. Hence, Perrin et al is clearly teaching the instant “drawing” of a liquid preform. It surely would have been obvious to have modified the method and apparatus of the primary reference as taught by Perrin et al to reduce the cross sectional diameter of the fiber prior to solidifying it. It would be less energy intensive and form the fiber at a diameter closer to its final, desired diameter when the fiber is actually drawn.

5. Applicant's arguments filed April 16, 2007 have been fully considered but they are not persuasive. Applicant's comments concerning the new matter rejection have been essentially addressed in paragraph 1, *supra*. While it may be that the preform is a liquid when it exits the die, it is hardened by crosslinking as soon as it exits the die. Any drawing of the preform outside the die would necessarily have to occur after at least

some solidification thereof, otherwise the preform would surely break upon the application of even the slightest tension—if still liquid. This would result in a useless product. Applicant's comments appear to agree with the fact that the "drawing" is occurring inside the tube before the preform actually exits the die. However, it is maintained that this flow downward is being erroneously—by applicant—referred to as a "drawing" when in fact it is a reduction in diameter due to fluid flow into a constrictive nozzle. At any rate, Perrin et al shows exactly this. If the apparatus claims are not anticipated by PCT –777, then they are obvious over the combination of PCT –777 and Perrin et al. The method claims are also obvious over the combination. Applicant points to column 7, lines 18-25 of Perrin et al, which teaches that the viscosity of the compositions would be increased to 50 Pasec using a cryogenic cooler. Applicant has the same disclosure—see instant paragraph 0066.

6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
June 19, 2007

M. Vargot
Mathieu D. Vargot
Primary Examiner
Art Unit 1732

6/19/07